

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014041040

PREHEARING CONFERENCE ORDER

On June 9, 2014,, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings (OAH). Heather S. Zakson, Attorney at Law, appeared on behalf of Parent and Student (collectively, Student). Donald Erwin, Assistant General Counsel, and Diana Massaria, Director, Litigation Research, appeared on behalf of Los Angeles Unified School District (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following Order:

1. Hearing Dates, Times, Location, and ALJ Assignment. District orally moved for a continuance of the hearing, based upon the unavailability of unspecified witnesses. The motion was opposed by Student. The motion was denied, for lack of good cause.

The hearing shall take place on June 17-19, and June 23-24, 2014, and continuing day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the first day of hearing shall begin at 9:30 a.m., and all subsequent hearing days shall begin at 9:00 a.m.

The hearing shall take place at the offices of OAH, located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406.

ALJ Eileen Cohn is assigned to the hearing.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.¹

A. Did District deprive Student of a FAPE from April 23, 2012, through April 23, 2014, by failing to conduct appropriate assessments of Student in the following respects:

1. By failing to timely assess Student although Student was not making educational progress;
2. By failing to timely provide assessment plans and to assess Student after referrals for assessment by Parent and teachers;
3. By failing to obtain valid assessments of Student in February 2013, in the areas of functional behavior, alternative and auxiliary communication, occupational therapy, academics, psychoeducational, transition, and speech and language;
4. By failing to timely conduct a functional behavior analysis assessment in April 2013, when Student's extreme behaviors disrupted his educational program;
5. By failing to conduct an adequate functional behavior analysis assessment in June 2013; and
6. By failing to complete assessments that were agreed upon by Student's individualized education program (IEP) team on June 7, 2013?

B. Did District fail to provide Student a FAPE since April 23, 2012 through April 23, 2014, by reason of the following:

1. Failing to implement Student's IEP's since April 2012, by failing to provide instruction and support in using assistive technology, including instruction and support in using a tablet device for communication;
2. Failing to provide appropriate and sufficient behavior services, including one-to-one behavior intervention support;
3. Failing to provide sufficient speech and language therapy; and by

¹In his Request for Due Process, Student alleged that District violated the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Unruh Civil Rights Act. OAH has no jurisdiction over such claims, and therefore those claims are dismissed.

4. Changing Student's placement from Lull Special Education Center to Sutter Middle School in February 2013, without providing communication support, transition support, and without providing additional behavior support.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate whether it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their final exhibit lists and exhibits on each other, and file their final exhibit lists with OAH, all in conformity with Education Code section 56505, subdivision (e)(7). The parties agreed that they may serve their exhibits and exhibit lists on each other in digital form. At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list, and not previously exchanged, shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is admissible.

4. Witnesses. The parties shall serve their final witness lists on each other and file them with OAH in compliance with Education Code section 56505, subdivision (e)(7). The parties have agreed that the witness lists may be served on each other by digital means. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, upon timely notice. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's final witness list except for good cause shown, and at the discretion of the ALJ.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. The parties shall be prepared at the beginning of the hearing, as well as at all times throughout the hearing, to discuss the witnesses to be presented, the order in which they will be called, and the amount of time the testimony of each such witness is expected to take.

The ALJ has discretion to limit the number of witnesses and set the length of time allowed for testimony. The parties are encouraged to review and curtail their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The parties should anticipate that, except for purposes of rebuttal or impeachment, witnesses who are listed on both parties' witness lists will only be permitted to be called to testify once.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination, at the discretion of the ALJ.

6. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. Prior to the time that each such witness is to testify, the proponent of the witness shall provide the witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. Each such witness shall testify from a private room using a landline telephone. No witness will be heard by telephone unless all these requirements have been fulfilled, or unless otherwise ordered by the ALJ.

7. Motions. No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the PHC of June 9, 2014.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing.

9. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing unless permission to the contrary is obtained from the ALJ.

10. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Special Needs and Accommodations: At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

12. Hearing Open/Closed To the Public. Student has not requested that the hearing be open to the public. In the absence of such request, the hearing shall be closed to the public.

13. Settlement. The parties are encouraged to continue working together

to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO OAH AT THE FAXINATION LINE: 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

14. Failure to comply with this Order or with Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: June 11, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings